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Does ONHWP really protect homebuyers?

Couple thinks consumer protection is 'smoke and mirrors'; disappointed in conciliation process

The Ontario New Home Warranty Plan (ONHWP) proudly proclaims that if there are outstanding construction items that cannot be resolved with the builder, homebuyers can request a formal conciliation.

For one unhappy homebuyer, however, the conciliation was "a waste of time," and his story is a useful lesson for buyers with similar complaints.

Last summer, I wrote about Mark, the buyer of a \$500,000 Thornhill home. (You can read the article online at <http://www.aaron.ca> under Columns, Aug. 17, 2002.)

Mark and his wife, Cheryl, complained about the "shabby way" they were treated, and the "extreme amount of heartache and trouble" they experienced with their builder.

Last fall, they filed a request for conciliation with ONHWP and paid the \$50 fee. Of the 36 items in dispute, the builder quickly remedied 12 before the hearing.

All but two of the rest were dismissed by the conciliator, either as "minor issues" or "matters not covered by the warranty plan."

Almost a year to the day after Mark and Cheryl moved into their dream house, they had an on-site conciliation meeting with a representative of the builder and Warren Northcott, the ONHWP conciliator.

Among his more interesting observations and findings are these:

COMPLAINT: Although Mark and Cheryl did not order a bathroom bidet, the builder completed the rough-in pipes and left them sticking out of the tile on the bathroom floor. The conciliator noted that the rough-in was a standard feature and it was not deleted from the agreement.

FINDING: Not warranted. "The complaint does not represent a defect in either materials or workmanship nor is it a violation of the Ontario Building Code. This is a contractual dispute; it is beyond the scope and mandate of the Ontario New Home Warranties Plan Act." (The same words of this finding occur over and over again in the conciliator's report.)

COMPLAINT: The buyers paid \$5,000 extra to extend the entire house by a foot in order to have the bathroom size made one foot longer. Despite the fact that builder and buyers initialled a floor plan showing the enlarged bathroom, it was built to the original size.

FINDING: Same as above. "A bathroom that measures eight feet in width is equal in quality to a bathroom that measures nine feet in width. (The agreement of purchase and sale) allows the builder to make minor changes to the plans and specifications."

COMPLAINT: The medicine cabinet was installed in the wrong bathroom.

FINDING: No defect in materials or workmanship. Not warranted.

COMPLAINT: The bay window dimensions are uneven, with one side being shorter than the other.

FINDING: "The observed condition is minor in nature, is not readily visible, and does not represent a defect in materials or workmanship." Not warranted.

A similar finding was made for a complaint of a 3/8-inch slope in the kitchen floor. "No excessive unevenness was observed."

COMPLAINT: Wrong brick colour was used on the house.

FINDING: Not warranted. There was no defect in materials or workmanship and no evidence of an unauthorized substitution.

One of the 12 items which the builder rushed to remedy prior to the conciliation meeting was the laying of carpet over an open cold-air return in the bedroom floor.

Anyone stepping on the spot might have gone right through the floor to the ceiling in the room below.

Since this was resolved before the conciliation, but almost a year after closing, the item was marked "not warranted."

Unfortunately, Mark and Cheryl had to file for conciliation and wait almost a year before these 12 items were fixed.

Only two of the 36 items were marked as a breach of the builder warranty, and go on the builder's performance record with ONHWP.

One of these was the failure of the builder to cap the pipe for the central vacuum in the garage. This would have allowed carbon monoxide to seep into the house from the garage a breach of the building code that could have had fatal consequences.

Why it took a year and a conciliation hearing to force the builder to put a plastic cap on a vacuum pipe is never adequately explained in the conciliation report.

I agree with Mark that the alleged consumer protection offered by ONHWP's conciliation process is "smoke and mirrors."

The fact is that the Ontario New Home Warranty Program will not stand behind consumers to force compliance with some significant components of their purchase agreements: floor plans, colours, designs, alterations, extras, "minor" blemishes and defects, and measurements.

It's time for the government to open up home warranty protection in Ontario to the private sector, and see who can do a better job.

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